

SHAB-EH-NAY—INDIAN CHIEF.

DECEMBER 26, 1856.—Laid upon the table and ordered to be printed.

Mr. PRINGLE, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of George Wells and others; the petition of John Arman and others; and the petition of R. K. Swift and others; in behalf of the Indian chief Shab-eh-nay, respectfully report:

That they have had the same under consideration, and have come to the conclusion that the prayer of the petitioners ought not to be granted. For the reasons that have influenced your committee to come to this conclusion they refer to the annexed letter from the Commissioner of Indian Affairs, and to the copy of a letter from a late Commissioner of Indian Affairs accompanying the same.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, April 12, 1856.

SIR: I have the honor to acknowledge the receipt of your letter of the 9th instant, with enclosures, relative to the claim of "Shab-eh-nay," a chief, for whose use a reservation was made in the treaty of July 29, 1829, with the Chippewa, Ottawa, and Potawatomie Indians; and requesting, in behalf of the Committee of Claims of the House of Representatives, a statement of the facts involved by the claim as far as known to this office.

In reply, I have to state, that by the 3d article of the said treaty there was reserved for the use of the said "Shab-eh-nay and his band two sections of land, at his village near the Paw-Paw grove."—(Statutes at Large, vol. 7, p. 321.)

By the subsequent treaty with the same Indians, concluded at Chicago on the 26th of September, 1833, it was by the 5th article thereof, amongst other things, stipulated as follows: "The reservation of two sections of land to Shab-eh-nay by the 2d clause of the 3d article of the treaty of Prairie du Chien, of the 29th of July, 1829, shall be a grant in fee simple to him, his heirs, and assigns forever."—(Statutes at Large, vol. 7, p. 433.)

The Senate of the United States refused to ratify this provision, and struck out the 5th article entirely.—(Statutes at Large, vol. 7, p. 447, note.)

Shab-eh-nay emigrated with his tribe west of the Mississippi, to lands provided for them by the government, having disposed of his interest in the reserve to Messrs. Ansel A. Gates and Orrin Gates. I do not understand this emigration, however, to have been in any manner forced or involuntary; but only in compliance with their treaty stipulations. On the 6th of May, 1848, the deeds to Messrs. Gates were submitted to this office by the Hon. John Wentworth, of Chicago, with the request that the same should be presented to the President for his approval; and upon application, it was decided by the Commissioner of Indian Affairs, Hon. Wm. Medill, that the treaty gave no authority to the reservee to sell the land. It was reserved for the use of himself *and his band* only; that when the parties for whose use it was reserved left it, it was competent for the United States to sell it, as other land ceded by that treaty, which had not been expressly granted to individuals named therein; that the action of the Senate upon the 5th article of the treaty of September 26, 1833, before mentioned, confirmed this view; that as the lands referred to were no longer occupied by the persons for whose use they were reserved, it was competent for the Commissioner of the General Land Office to dispose of the same as other public lands of the United States. The commissioner therefore declined to recommend the said deeds for the approval of the President. A copy of this letter to Mr. Wentworth, dated May 27, 1848, is enclosed.

This decision was communicated to the Commissioner of the General Land Office on the 29th of May, 1848, and thenceforward the land has been considered and treated by this office as a part of the public domain, and under the exclusive control of the General Land Office.

The enclosures received with your letter are herewith returned.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,

Commissioner.

Hon. J. R. GIDDINGS,

Chairman Committee of Claims, Ho. of Reps.

WAR DEPARTMENT,
Office Indian Affairs, May 27, 1848.

SIR: I had the honor to receive your note of 6th instant, in which you ask my attention to the propriety of confirming the three deeds which accompanied it, each executed by Shab-eh-nay, on 1st of December, 1845, in this city; one to Ansel A. Gates for 320 acres; one to Orrin Gates for 320 acres; and one to Ansel A. Gates for 640 acres; and conveying the land reserved for the use of said Shab-eh-nay and his band, by the 3d article of the treaty concluded with the Chippewa, Ottawa, and Potawatomie Indians, on 29th July, 1829.

The treaty gave no authority to Shab-eh-nay to sell the land. It was reserved for the *use* of himself and his band only; and it is the opinion of this office, that when the parties for whose use it was reserved left it, that it was competent for the United States to sell it as other lands ceded by that treaty, which had not been expressly granted to individuals named therein. This view is confirmed by the fact that the 5th article of a treaty concluded with the same Indians on 26th September, 1833, which stipulated that the reservation made by the treaty of 1829 should be a grant in fee simple to Shab-eh-nay, his heirs, and assigns forever, was stricken out by the Senate.

It seems to me, therefore, that as the lands referred to are no longer occupied by the persons for whose use they were reserved, that it is competent for the Commissioner of the General Land Office to dispose of the same as other public lands of the United States.

Very respectfully, your obedient servant,

WILLIAM MEDILL,
Commissioner.

HON. JOHN WENTWORTH,
House of Representatives, U. S.

The treaty gave an authority to Shan-RE-KAY to sell the land. It was intended for the use of himself and his family only; and in the opinion of this office that when the parties for whose use it was intended had it was competent for the United States to sell it as other lands sold by that office, which had not been expressly granted to individuals named therein. The view is confirmed by the fact that the old article of a treaty concluded with the same Indians on 20th September, 1823, which stipulated that the reservation made by the treaty of 1823 should be a grant in fee simple to Shan-RE-KAY, his heirs and assigns forever, was strikingly one in the nature.

It seems to me that it is at the least probable that no lawyer occupied by the persons or who has that were necessary, that it be competent for the Commissioner of the General Land Office to dispose of the same in order to settle the title of the United States.

Very respectfully, your obedient servant,

WILLIAM MERRILL

San Juan, N. M.

May 1, 1880